

110TH CONGRESS  
1ST SESSION

# H. R. 1368

To establish a program to provide financial incentives to encourage the adoption and use of interactive personal health records.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2007

Mr. KENNEDY (for himself, Mr. REICHERT, and Mr. SMITH of Washington) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To establish a program to provide financial incentives to encourage the adoption and use of interactive personal health records.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Personalized Health  
5       Information Act of 2007”.

1 **SEC. 2. PERSONAL HEALTH RECORD (PHR) INCENTIVE**  
2 **PROGRAM.**

3 (a) ESTABLISHMENT.—The Secretary of Health and  
4 Human Services (in this section referred to as the “Sec-  
5 retary”) shall establish a program (in this section referred  
6 to as the “program”) to provide financial incentives for  
7 the use of interactive qualifying personal health records  
8 by Medicare and other patients and their health care pro-  
9 viders in order to—

10 (1) provide patients (or their authorized rep-  
11 resentatives) access to and control over their per-  
12 sonal health data and information and educational  
13 information so as to become healthier and more in-  
14 formed and engaged health care consumers;

15 (2) make available to authorized health care  
16 providers a more accurate minimum data set of pa-  
17 tient information at all points of care;

18 (3) protect patient security and privacy;

19 (4) improve patients’ adherence to evidence-  
20 based care guidelines, preventive care, and screening  
21 protocols, thereby improving health outcomes and  
22 lowering health care costs;

23 (5) improve medication adherence by patients,  
24 thereby improving health outcomes and lowering  
25 health care costs;

1           (6) provide patients with more accurate, timely,  
2           and appropriate information related to their health  
3           care benefits and related administrative information;

4           (7) improve the quality and efficiency of com-  
5           munication between health care providers and pa-  
6           tients;

7           (8) create a direct communications channel to  
8           patients in the event of health emergencies; and

9           (9) provide access with appropriate privacy  
10          safeguards to de-identified health care information  
11          to evaluate and advance public health and health re-  
12          search goals.

13          (b) INCENTIVE PAYMENTS.—

14           (1) IN GENERAL.—Under the program, each  
15          qualified physician (as defined in subsection (c))  
16          that has a qualifying patient (as defined in sub-  
17          section (d)) shall receive an incentive payment from  
18          the PHR Incentive Fund established under sub-  
19          section (f). In the case of such a patient of more  
20          than one physician, each such physician (who does  
21          not share in the same group practice, as defined by  
22          the Secretary, with another qualifying physician of  
23          that patient) may receive such a payment.

24           (2) AMOUNT OF PAYMENT.—

1 (A) IN GENERAL.—Except as otherwise  
2 provided, the amount of the incentive payment  
3 to a qualifying physician under the program  
4 shall be at least \$3 per year for each qualifying  
5 patient of the physician.

6 (B) ADJUSTMENT; LIMITATION.—The Sec-  
7 retary shall annually retrospectively set the in-  
8 centive payment amount based on the amount  
9 of the contributions into the PHR Incentive  
10 Fund. The Secretary shall pay PHR incentives  
11 payments only from such Fund.

12 (C) ANNUAL LIMITATION.—The Secretary  
13 shall establish a maximum annual payment  
14 under this section to any qualifying physician.

15 (3) DURATION.—Payments shall be made under  
16 the program during a 3-year period beginning on the  
17 date of implementation of the program, except that  
18 the Secretary may continue the program for an addi-  
19 tional two years if the Secretary determines that  
20 continuation of the program for such period would  
21 be a cost-effective way of achieving the goals of this  
22 Act.

23 (4) PROGRAM EDUCATION.—

24 (A) PUBLICATION OF NAMES QUALIFYING  
25 PHYSICIANS.—In order to assist patients in

1 identifying health care providers that use quali-  
2 fying personal health records, Secretary shall  
3 publish on the official website for the Centers  
4 for Medicare & Medicaid Services (CMS), or  
5 other online locations of the Secretary's choos-  
6 ing, a list of qualifying physicians who partici-  
7 pate in the Medicare program and who have re-  
8 ceived incentive payments under this section.

9 (B) EDUCATION.—

10 (i) PATIENT EDUCATION.—The Sec-  
11 retary shall, in consultation with appro-  
12 priate organizations that represent health  
13 care consumers, take steps to educate  
14 Medicare beneficiaries and other patients  
15 about the health and convenience benefits  
16 of qualifying personal health records.

17 (ii) PROVIDER EDUCATION.—The Sec-  
18 retary shall take steps to educate Medicare  
19 providers about the patient, provider and  
20 overall health care benefits of using quali-  
21 fying personal health records.

22 (c) QUALIFIED PHYSICIAN DEFINED.—For purposes  
23 of this section, the term “qualified physician” means a li-  
24 censed physician (or other licensed health care provider,  
25 such as a clinic, designated by the Secretary) that meets

1 the following requirements, with respect to a qualifying  
2 patient of that physician and the qualifying personal  
3 health record of that patient:

4           (1) The physician (or provider), or authorized  
5 representative, uses the QPHR for patient registra-  
6 tion for encounters, including taking demographic  
7 information, insurance information, medication list,  
8 problems list, family history, and other information  
9 included within the QPHR.

10           (2) The physician (or provider), or authorized  
11 representative or a QPHR service provider (as de-  
12 fined in subsection (e)(2)), updates the diagnosis  
13 and medication list (including all current medica-  
14 tions and new medications prescribed or provided as  
15 samples) in the QPHR after each patient encounter,  
16 if appropriate and authorized by the patient, either  
17 by direct entry or through a data sharing arrange-  
18 ment using an appropriate electronic means, such as  
19 an electronic medical record or e-prescribing.

20           (3) The physician (or provider), or authorized  
21 representative, uses the QPHR as appropriate and  
22 authorized by the patient to communicate appro-  
23 priate patient education and care management mes-  
24 sages.

1           (4) There is submitted to the Secretary by the  
2           physician (or by the administrator of the QPHR on  
3           the physician's behalf) on a regular basis, but no  
4           less frequently than annually, a report documenting  
5           the number of such qualifying patients of the physi-  
6           cian (or provider) and the use of QPHRs of such pa-  
7           tients.

8           (5) The physician (or provider) meets other re-  
9           quirements as the Secretary may establish.

10          (d) QUALIFYING PATIENT DEFINED.—For purposes  
11          of this section, the term “qualifying patient” means an  
12          individual for whom a qualifying personal health record  
13          has been established and is in operation under the pro-  
14          gram and who is a Medicare beneficiary or is covered  
15          under a health benefits or other plan the sponsor of which  
16          is participating as a Fund partner under this section.

17          (e) QUALIFYING PERSONAL HEALTH RECORD  
18          (QPHR); QPHR SERVICE PROVIDER.—

19               (1) DEFINITION.—For purposes of this section,  
20               the terms “qualifying personal health record” and  
21               “QPHR” mean a record of health care related infor-  
22               mation that meets the following requirements:

23                       (A) ACCESS TO THE RECORD.—

24                               (i) ACCESS RIGHTS.—Access to the  
25                               record is controlled solely by the patient

1 (or the patient's authorized representa-  
2 tive), with the patient (or the patient's au-  
3 thorized representative) able to access on-  
4 line, print, copy to electronic media, or  
5 provide online access to authorized third  
6 parties, including health care providers, to  
7 all individually identifiable health informa-  
8 tion held in the record at any time.

9 (ii) TERMINATION RIGHTS.—The  
10 record allows a patient (or the patient's  
11 authorized representative) to terminate the  
12 further use of the record service at any  
13 time, including elimination of the patient's  
14 personal health information in the control  
15 of the QPHR service provider. Nothing in  
16 this clause shall require a health care pro-  
17 vider to eliminate a patient's personal  
18 health information included in the QPHR  
19 that is in a medical record maintained by  
20 the provider.

21 (iii) TRANSPORTABILITY.—The pa-  
22 tient's rights to control access to the  
23 record under this subparagraph are not af-  
24 fected by changes in relationships with  
25 particular providers or health plans.



1 (B) SECURITY.—The record meets min-  
2 imum security standards, including the rules  
3 promulgated under section 264(c) of the Health  
4 Insurance Portability and Accountability Act of  
5 1996 (HIPAA) and other such minimum stand-  
6 ards as identified by the Secretary under para-  
7 graph (3), and the QPHR service provider com-  
8 plies with any security and privacy standards,  
9 policies, and practices adopted under such para-  
10 graph.

11 (C) INTEROPERABILITY.—The record is  
12 capable of exchanging standards-based clinical  
13 and patient data with other sources and users  
14 of health data, including other QPHRs, elec-  
15 tronic health records used by hospitals and phy-  
16 sicians and other providers, pharmacies, phar-  
17 macy benefit managers, and health plans.

18 (D) WEB-BASED.—The record is web-  
19 based and capable of sharing information be-  
20 tween patients and their providers, and ena-  
21 bling patient-provider communication.

22 (E) MESSAGING CAPABILITIES.—

23 (i) EDUCATION REMINDERS.—Subject  
24 to clause (v), the QPHR service provider is  
25 capable of sending patient-specific patient

1 education, reminders, and clinical messages  
2 to patients based upon data in the QPHR,  
3 but such messages shall not be sent unless  
4 such messages comply with standards  
5 adopted under paragraph (4). The Sec-  
6 retary shall work with the Secretary of  
7 Homeland Security and the Director of the  
8 Centers for Disease Control and Preven-  
9 tion to optimize the public health and  
10 emergency response capabilities of the net-  
11 works created by QPHRs.

12 (ii) FEDERAL REMINDERS.—Subject  
13 to clause (v), the QPHR service provider  
14 provides for the sending on behalf of Fed-  
15 eral agencies of objective, accurate, pa-  
16 tient-specific messages to patients con-  
17 cerning their health care or benefits, but  
18 such messages shall not be sent unless the  
19 messages comply with standards adopted  
20 under paragraph (4).

21 (iii) FUND PARTNER MESSAGES.—  
22 Subject to clause (v), the QPHR service  
23 provider provides for the sending, on be-  
24 half of Fund partners who contribute to  
25 the Fund, appropriate patient-specific mes-

1           sages to consumers (with whom such part-  
2           ners have pre-existing relationships) con-  
3           cerning the patients' health care, medica-  
4           tions, treatments, medical devices or bene-  
5           fits, but such messages shall not be sent  
6           unless such messages comply with stand-  
7           ards adopted under paragraph (4). A fund  
8           partner may not send a message to a pa-  
9           tient about a product or service unless that  
10          product or service has already been pre-  
11          scribed or recommended to the patient by  
12          a health care provider.

13                 (iv) HEALTH PLAN NOTIFICATION.—  
14          The QPHR service provider notifies, no  
15          less frequently than quarterly, each Fund  
16          partner that operates a health benefit plan  
17          of the individuals who have received mes-  
18          sages sent on behalf of the Fund partner  
19          under this section.

20                 (v) LIMITATION ON COMMERCIAL SO-  
21          LICITATION.—The QPHR service provider  
22          does not allow messages to be sent to pa-  
23          tients unless—

24                         (I) the patient is a patient or  
25                         beneficiary of the sender or source of

1 the message, uses the sender's or  
2 source's product with a prescription  
3 or recommendation of a provider, or  
4 has some other pre-existing relation-  
5 ship (as defined by the Secretary)  
6 with the sender or source, or the  
7 sender or source is a public health  
8 agency;

9 (II) the message contains infor-  
10 mation directly related to the patient's  
11 health or health care and does not in-  
12 clude marketing or commercial solici-  
13 tations;

14 (III) the message complies with  
15 standards adopted under paragraph  
16 (3); and

17 (IV) the message clearly identi-  
18 fies the source of the content and the  
19 sender of the message.

20 (vi) PATIENT OPT-OUT.—The QPHR  
21 service provider allows a patient (or pa-  
22 tient's authorized representative) to opt  
23 out of receiving messages entirely or from  
24 particular sources.

1 (F) PUBLIC HEALTH ANALYSIS AND RE-  
2 SEARCH.—The QPHR service provider is capa-  
3 ble of providing de-identified data for public  
4 health analysis and for research purposes. The  
5 Secretary shall consult with the Commissioner  
6 of the Food and Drug Administration, the Di-  
7 rector of the National Institutes of Health, the  
8 Director of the Centers for Disease Control and  
9 Prevention, and the Administrator of the Agen-  
10 cy for Healthcare Research and Quality to opti-  
11 mize the public health and post-market surveil-  
12 lance capabilities of QPHRs.

13 (G) AUTHENTICATION.—The record in-  
14 cludes functionality to authenticate the pa-  
15 tient’s identity prior to the record’s use to re-  
16 ceive electronic data feeds of personal health in-  
17 formation (other than actual authentication in-  
18 formation) from third party sources, such as  
19 pharmacies, pharmacy benefit managers, lab-  
20 oratories, and health plans, including the Medi-  
21 care program.

22 (2) QPHR SERVICE PROVIDER DEFINED.—For  
23 purposes of this section, the term “QPHR service  
24 provider” means an entity that operates or admin-  
25 isters a QPHR or part of a QPHR and has access

1 to patients' individually identifiable health informa-  
2 tion contained in the QPHR.

3 (3) PRIVACY AND CONSUMER PROTECTION  
4 STANDARDS.—

5 (A) IN GENERAL.—The Secretary shall set  
6 minimum security, privacy and data use stand-  
7 ards for QPHRs, in addition to such standards  
8 as required under regulations promulgated  
9 under section 264(c) of the Health Insurance  
10 Portability and Accountability Act of 1996  
11 (HIPAA), in order to optimally protect and  
12 safeguard patient health care information. Such  
13 standards shall include a required plain lan-  
14 guage notice of patients' privacy rights with re-  
15 spect to personal health records.

16 (B) TREATMENT OF QPHR SERVICE PRO-  
17 VIDER AS COVERED ENTITY.—A QPHR service  
18 provider shall be treated as a covered entity for  
19 purposes of applying the HIPAA regulations re-  
20 ferred to in subparagraph (A).

21 (C) CONSUMER PROTECTION BOARD.—The  
22 Secretary shall establish a consumer protection  
23 board, a majority of whose members represent  
24 health care consumers, including individuals

1 with chronic diseases and with mental and ad-  
2 dictive disorders. Such board shall—

3 (i) recommend to the Secretary min-  
4 imum standards to protect patient-identifi-  
5 able information stored in or transmitted  
6 from a QPHR;

7 (ii) recommend procedures to ensure  
8 the objectivity, relevance, and accuracy of  
9 messages sent to patients via their  
10 QPHRs; and

11 (iii) have the right to request and re-  
12 view the security and privacy capabilities,  
13 policies and practices of those entities ad-  
14 ministering QPHRs.

15 (D) NOTIFICATION OF BREACH.—A QPHR  
16 service provider must disclose any breach of the  
17 security of individually identifiable personal  
18 health information contained in a QPHR to any  
19 individual whose individually identifiable per-  
20 sonal health information was, or is reasonably  
21 believed to have been, acquired by an unauthor-  
22 ized person and to the Secretary in a manner  
23 to be specified by the Secretary.

24 (E) AVAILABILITY OF INDIVIDUAL HEALTH  
25 INFORMATION IN ELECTRONIC FORM.—Effec-

1           tive beginning on January 1, 2010, an indi-  
2           vidual who requests a copy of the individual's  
3           individually identifiable health information pur-  
4           suant to the HIPAA regulations referred to in  
5           subparagraph (A) shall be entitled to receive  
6           that information in electronic form capable of  
7           being imported into a QPHR, if such informa-  
8           tion was maintained in electronic form by the  
9           entity from which the information is requested.

10          (4) MESSAGE STANDARDS.—The Secretary  
11          shall establish minimum standards to ensure the ob-  
12          jectivity, accuracy and relevance of messages sent to  
13          individual patients under paragraph (1)(E) from a  
14          QPHR and to protect against the use of such mes-  
15          sages by Fund partners for commercial solicitations  
16          or marketing. Such standards shall incorporate ex-  
17          isting standards governing communications to con-  
18          sumers established by the Food and Drug Adminis-  
19          tration or other Federal agencies.

20          (f) PHR INCENTIVE FUND.—

21               (1) IN GENERAL.—The Secretary shall establish  
22          a PHR Incentive Fund (in this section referred to  
23          as the “PHR Incentive Fund” or “Fund”). The  
24          Fund may receive contributions from Fund partners  
25          for the sole purpose of paying PHR incentives under



1 subsection (a), conducting annual studies under sub-  
2 section (g), and otherwise carrying out the program.

3 (2) FUNDING PARTNERS.—

4 (A) IN GENERAL.—The Secretary may  
5 enter into contracts with public or private pay-  
6 ers, drug manufacturers, device manufacturers,  
7 or other public or private entities (in this sec-  
8 tion referred to as “Fund partners”) to allow  
9 the Fund to receive contributions in accordance  
10 with this subsection and other terms deter-  
11 mined by the Secretary.

12 (B) FEDERAL PARTNERS.—The Secretary  
13 shall seek the involvement and contributions of  
14 the Food and Drug Administration, the Centers  
15 for Disease Control and Prevention, the Agency  
16 for Healthcare Research and Quality, and the  
17 Department of Homeland Security to maximize  
18 the effectiveness of the QPHRs in meeting the  
19 health, national security, emergency response,  
20 biosurveillance, and research goals of the Fed-  
21 eral government in a manner consistent with  
22 this Act.

23 (C) PARTNER ACCOUNTS.—The Fund shall  
24 include an account for each Fund partner, in-  
25 cluding Medicare, separately accounting for

1 each Fund partner's contributions to the Fund.  
2 Incentive payments shall be debited from each  
3 account in accordance with this subsection.  
4 Amounts in the account of a Fund partner that  
5 are not paid in fiscal year remain available for  
6 payment from such account in the subsequent  
7 fiscal year.

8 (D) CONTRIBUTION LEVELS.—Contribu-  
9 tion levels to the Fund by Fund partners shall  
10 be set annually by the Secretary, except that  
11 the contribution level for the first year shall be  
12 as follows:

13 (i) MEDICARE CONTRIBUTION.—The  
14 Secretary shall contribute \$3 for each  
15 Medicare beneficiary for whom any PHR  
16 incentive payment is made during such  
17 year by transferring the appropriate  
18 amount from the Medicare trust funds  
19 under parts A and B of the Medicare pro-  
20 gram, in such proportion as the Secretary  
21 may specify.

22 (ii) FDA-MESSAGING CONTRIBU-  
23 TIONS.—Each manufacturer shall con-  
24 tribute \$3 for each qualifying patient for  
25 each medication adherence program for

1           which one or more messages are sent  
2           under subsection (e)(1)(E)(iii) in the year.

3           (iii) OTHER CONTRIBUTIONS.—Any  
4           other fund partner shall contribute \$3 for  
5           each qualifying patient for whom a PHR  
6           incentive payment is made, except that the  
7           Secretary may establish other contribution  
8           levels for device manufacturers or other  
9           Fund partners that employ messages sent  
10          under subsection (e)(1)(D)(iii).

11          (E) CHARGING FUND PARTNERS.—Each  
12          Fund partner's account shall be debited accord-  
13          ing to the same formula with which contribu-  
14          tions were determined. In the event that a  
15          Fund partner's account does not have a suffi-  
16          cient balance to cover the Fund partner's liabil-  
17          ity, the Fund partner shall make a supple-  
18          mental contribution to the Fund to cover the  
19          shortfall plus such penalty as the Secretary may  
20          assess.

21          (F) LIMITATION ON BENEFITS.—Contribu-  
22          tions by a Fund partner to the Fund shall con-  
23          fer no preferential access to data or information  
24          or any other benefit to the partner other than  
25          public acknowledgment under paragraph (5)

1           and the ability to have messages sent to quali-  
2           fying patients under subsection (e)(1)(D)(iii).

3           (3) PUBLICATION OF FUND CONTRIBUTORS.—

4           The Secretary shall publish on the official website of  
5           the Centers for Medicare & Medicaid Services a list  
6           of Fund partners that have contributed to the Fund.

7           (g) ANNUAL STUDY.—

8           (1) IN GENERAL.—The Secretary shall provide  
9           for an annual study to assess the level of patient en-  
10          gagement in their QPHR, patients' management of  
11          their health (including adherence to prescribed medi-  
12          cations and recommended preventive care), changes  
13          in health outcomes, and cost savings resulting from  
14          implementation of the program. The study shall in-  
15          clude collection of aggregate data documenting the  
16          number of qualifying patient, number and kind of  
17          messages sent to patients, the percentage of mes-  
18          sages opened by patients, and other measures of the  
19          program's effectiveness.

20          (2) FUNDING.—There are available from the  
21          PHR Incentive Fund not to exceed \$2,000,000 each  
22          year to pay for the annual study under paragraph  
23          (1). Amounts so used shall be debited from each  
24          Fund partner's account on a pro-rata basis.

○